

<b>Notice of Allowability</b>	Application No.	Applicant(s)	
	10/050,387	KOSCHE ET AL.	
	Examiner	Art Unit	
	Ted T. Vo	2191	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to supplemental Amendment on 10/28/05.
2. ☒ The allowed claim(s) is/are 1,3-53 and 61-69.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

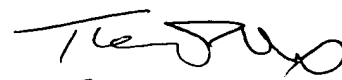
4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date <u>11/07/05</u> | 7. <input type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                               | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|  | 9. <input type="checkbox"/> Other _____  |

  
 TED T. VO  
 Primary Examiner

Art Unit: 2191

1. The amendment and arguments filed on 10/28/05 as the results from the interview dated on 10/20/05, have been considered.

The Drawings filed on 01/16/02 are accepted.

Prior art of record, by Armstrong, "HotSpot: A new breed of virtual machine", 1998, remains the closest art in searching.

#### Reasons for Allowance

2. Claims 1, 3-53, 61-69 are allowed.

As per interview, took place on October 20, 2005 (An interview summary has been provided to Applicant's representation on the same date), Applicants' representative had discussed and argued that the Claims are to identify at least one instance of at least **one operation in a first executable instance of code**. Applicants' representative pointed out that the Hot spot's compiler of Sun is to prepare only the method that is not part on the association between the execution characteristic and identified operation instance. Applicants' representative provided with the amended limitation "wherein the operation identification...." (Recited in Claim 1), and pointed out that with the amended limitation it will clarify that the prepared second executable instance as to be in part within the identified operation. Applicants' representative pointed out that the prepared method in the Hot spot, discussed by Armstrong, located some where in the computer cache; it is not part on the association between the execution characteristic and identified operation instance. Therefore, when the Sun's hot spot optimized this hot spot or another hot spot, it cannot additionally optimize the previous prepared executable instance as recited in Claim 1, and claiming in independent Claims 34, or in independent Claims 61 and 66.

Prior of record, Armstrong, which discusses the profiling hotspots and preparing optimized code for hot spots used in Sun's dynamic compiler, remains the closest art of record.

Therefore, the following is an examiner's statement of reasons for allowance: The cited prior arts taken alone or in combination fail to teach claimed invention that prepares code when identifying instances of an operation that comprises at least features,

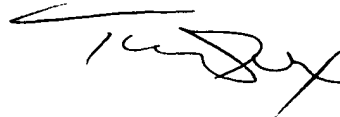
*"preparing a second executable instance of the code based, at least in part, on the association between the execution characteristic and the identified operation instance", as recited in independent Claim 1, and in such manners in independent Claims 34, 61, and 66.*

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ted T. Vo whose telephone number is (571) 272-3706. The examiner can normally be reached on 8:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708.

The facsimile number for the organization where this application or proceeding is assigned is the Central Facsimile number **571-273-8300**.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ted T. Vo  
Primary Examiner  
Art Unit 2191  
December 09, 2005